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DOCKET NO. 22168

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PETITION OF IP COMMUNICATIONS §
CORPORATION TO ESTABLISH §
EXPEDITED PUBLIC UTILITY §
COMMISSION OF TEXAS OVERSIGHT §
CONCERNING LINE SHARING ISSUES §

PUBLIC UTILITY COMMISSION

OF TEXAS

DOCKET NO. 22469

PETITION OF COVAD §
COMMUNICATIONS COMPANY AND §
RHYTHMS LINKS, INC. AGAINST §
SOUTHWESTERN BELL TELEPHONE §
COMPANY AND GTE SOUTHWEST INC. §
FOR POST-INTERCONNECTION §
DISPUTE RESOLUTION AND §
ARBITRATION UNDER THE §
TELECOMMUNICATIONS ACT OF 1996 §
REGARDING RATES, TERMS, §
CONDITIONS AND RELATED §
ARRANGEMENTS FOR LINE SHARING §

PUBLIC UTILITY COMMISSION

OF TEXAS

INTERIM AWARD

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Attachments 1 – 3: Network diagrams illustrating splitter ownership scenarios

Attachment 4: Joint DPL of the Parties

Attachment 5: Contract Language

I. Summary of Proceedings

Background

On February 25, 2000, IP Communications Corporation (IP) filed a petition to establish expedited commission oversight concerning line sharing.¹ On March 17, 2000, Southwestern Bell Telephone Company (SWBT) filed a motion to dismiss IP's motion, alleging that IP had not sufficiently stated grounds for the relief sought. On April 28, 2000, Covad Communications Company (Covad) and Rhythms Links, Inc. (Rhythms) jointly filed a complaint against SWBT and GTE Southwest Inc. (GTE)² for post-interconnection agreement dispute resolution and arbitration under the federal Telecommunications Act of 1996 (FTA).³ In addition, the parties requested interim relief.⁴ On May 3, 2000, SWBT filed a conditional withdrawal of its motion to dismiss in Docket No. 22168, if appropriate notice was given to all competitive local exchange carriers (CLECs) and all issues regarding line sharing were addressed in this consolidated docket. GTE likewise agreed to participate in a generic docket to address line sharing issues.⁵ Dockets Nos. 22168 and 22469 were thereby consolidated, and notice was sent to all certificated local service providers. AT&T Communications of Texas, L.P., MCI WorldCom Communications, Inc., Sage Telecom, Inc., Northpoint Communications, Inc., and Vectris Telecom, Inc., filed motions to intervene. ConnectSouth Communications, Inc. filed comments in the docket but did seek intervention status. The scope of the proceeding was limited to issues regarding line sharing, as currently defined by the Federal Communications Commission (FCC), where an incumbent local exchange carrier (ILEC) is the voice provider and a CLEC is the data provider over the same loop.

¹ Docket No. 22168.

² Docket No. 22469.

³ Pub. L. 104-104, 110 Stat. 56, codified as amended in scattered sections of 15 and 47 U.S.C. (FTA).

⁴ Complaint of Covad Communications Company and Rhythms Links, Inc. against Southwestern Bell Telephone.

⁵ Tr. Prehearing Conference at 10 (May 4, 2000).

On December 9, 1999, the FCC released the *Line Sharing Order*.⁶ Paragraph 160 of the Order reads:

"In addition, as explained in more detail below, we strongly encourage the states to issue interim arbitration awards setting out the necessary rates, terms, and conditions for access to this unbundled network element, with any unresolved issues subject to true-up when the state commission completes its arbitration. We urge states to issue these awards as quickly as possible after a party petitions the state for arbitration under section 252(b)(1) so that competitive carriers are actually able to begin providing advanced services on a shared loop within 180 days of release of this order."

Line sharing is essential for CLECs' broad-based entry into the digital subscriber line (xDSL) market. Delay in provisioning the high frequency portion of the loop will have a significant adverse impact on competition in the provisioning of advanced services to customers that want both voice and data over a single line.⁷ Because ILECs are currently the only carriers able to use line sharing to provide advanced services, any delay in the line sharing availability because of the timeframes under section 252 could deny mass market consumer access for nine months or more. Thus, delay in implementation could severely undermine any pro-competitive effects of line sharing. Parity between CLECs and the ILECs advanced services retail offering or the ILEC advanced services affiliate is essential to guarantee nondiscriminatory access to line sharing. This interim arbitration award is designed to enable rapid entry by new competitors, thus furthering the goal of deployment of advanced services to all Americans.⁸

The arbitration was divided into two phases. Phase I addressed issues necessary for interim relief. Phase II will address all remaining issues for the final award. This interim Award addresses Phase I. Accordingly, this interim Award sets only interim rates, terms and conditions

⁶ In the *Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, CC Docket No. 96-98, Third Report and Order in CC Docket No. 98-0147, Fourth Report and Order in CC Docket 96-98 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁷ *Id.* ¶ 161.

to facilitate line sharing in the interim period and will be subject to true-up and/or refund based on the ultimate resolution of these issues in the final award. In addition, as required by the Line Sharing Order, this interim Award is sufficiently detailed to permit the ILECs to begin providing the high frequency unbundled network element (UNE) immediately upon the effective date of the interim Award.⁹ Coupled with the mandate that ILECs should be able to implement the requirements for line sharing by June 6, 2000, the Arbitrators find that the provisions of the interim Award should be implemented immediately. To assist the parties and provide a mechanism by which CLECs can enter the market rapidly, the Arbitrators include as Attachment 5, generic interim contract language that complies with this Award. In addition to the contract language found acceptable by the Arbitrators, the parties as necessary and by mutual agreement, may establish additional terms and conditions consistent with this Award.

This arbitration proceeding has been conducted in accordance with P.U.C. PROC. R. 22.301 - 22.310. The scope of the issues addressed in this arbitration proceeding is limited to the decision point list (DPL)¹⁰ developed by the Parties.¹¹

Ruling on Disputed Issues

The issues in the joint DPL are generally grouped into the following five areas: (1) splitter; (2) testing; (3) provisioning; (4) rate; and (5) miscellaneous contract issues. In this interim Award, each DPL issue is restated, along with a brief summary of the Parties' positions, followed by the Arbitrators' ruling. As required by P.U.C. PROC. R. 22.305(s), an explanation of the Arbitrators' rationale for each of the rulings is provided.

⁸ *Id.* ¶ 164.

⁹ *Id.* ¶ 165.

¹⁰ Decision Point List Matrix (DPL) (May 22, 2000).

¹¹ SWBT was in agreement with IP and Northpoint's proposal regarding DPL Issues 17 and 22 (Tr. at 125, May 22, 2000). Therefore, these issues were not addressed in this Award.

The Arbitrators find that the following decisions and rates, terms and conditions imposed on the Parties by this interim Award meet the requirements of FTA § 251 and P.U.C. PROC. R. 22.301-22.310 and any applicable regulation prescribed by the FCC pursuant to FTA § 251. This interim Award establishes terms and conditions, including rates, for interconnection, services, and network elements according to the standards set forth in FTA § 252(d) and the *Line Sharing Order*.

II. Splitter Issues

DPL Issue Nos. 1-3, 19(a) and 19(c)

2. Should SWBT be required to provide a menu of three splitter network configurations to address CLECs' differing business needs?¹²

Parties' Positions

Covad and Rhythms argue that SWBT and GTE should be required to offer a menu of three splitter configurations: (1) CLEC-owned splitter; (2) ILEC-owned splitter located in a common collocation area; and (3) ILEC-owned splitter located adjacent to the distribution frame. Covad, Rhythms, IP and Northpoint maintain that only such flexibility will allow CLECs to implement their individualized business plans to provide advanced services to Texas customers on a wide-spread basis.

SWBT claims that the FCC has not suggested that CLECs should be able to pick and choose splitter configurations. However, SWBT indicates that it is offering the CLECs the first two configurations while the third configuration can be made available to CLECs as provided in SWBT's virtual collocation tariff.

GTE asserts that, on an interim basis, the focus should be on expedited entry into the market rather than upon the provisioning of different splitter configurations. GTE suggests that CLECs should follow the orderly process contemplated in the FTA for negotiation and arbitration.

Award

¹² DPL Issue No. 2 is discussed before DPL Issue No. 1 for convenience.

The *Line Sharing Order*, regarding the issue of splitter ownership states:

"We conclude that, subject to certain obligations, incumbent LECs may maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree that subject to certain obligations, the incumbent LEC may maintain control over the loop and the splitter functionality if desired."¹³

And:

"We concluded that incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network element."¹⁴

The Arbitrators believe that the most reasonable interpretation of the *Line Sharing Order*, based on the evidence presented in the interim phase, is that the ILECs can either provide CLECs with the splitter equipment or allow CLECs to use their own splitter equipment. Although SBC's, SWBT's parent company, position regarding splitter ownership, as stated in its comments to the FCC prior to the issuance of the *Line Sharing Order*, was that the ILEC should maintain control of the splitter equipment,¹⁵ the Arbitrators note that in mid-February, SWBT notified CLECs that it would not offer splitter functionality.¹⁶ Therefore, although the Arbitrators acknowledge CLECs' claims that different business needs may require different splitter configurations, the Arbitrators are not convinced that these business plans are based either on SWBT's representation or on the *Line Sharing Order*.

The evidence in the record does not support CLECs' claims that lack of availability of splitter configuration options in the interim period would impair their ability to provide advanced

¹³ *Line Sharing Order* ¶76.

¹⁴ *Line Sharing Order* ¶146.

¹⁵ See Tr. at 206-207 (May 23, 2000).

¹⁶ See SWBT Exhibit No. 3, Betty Schlackman's Direct Testimony at 10 (May 17, 2000).

services on a shared loop. Some CLECs choose to utilize the HFPL UNE using their own splitters.¹⁷ When asked about the disadvantages of owning their own splitters, CLECs raised concerns regarding cost, space constraints, additional cabling and liability.¹⁸

The Arbitrators believe that the cost concern is unpersuasive as the cost per customer of a Digital Subscriber Loop Access Multiplexer ("DSLAM")¹⁹ per customer is approximately ten times the cost of a splitter per customer.²⁰ Regarding space constraints, the Arbitrators were not presented with any concrete evidence that demonstrates the existence of such a problem.²¹ CLECs' claims regarding cabling will be addressed in the Arbitrators analysis of DPL Issue No. 19(c). The Arbitrators believe that it is more appropriate to address the concerns mentioned above in the permanent proceeding, after Parties have gathered actual information.

Line sharing creates a unique scenario – two carriers sharing a customer while using the same loop facility. In the ILEC-owned splitter scenario SWBT has an additional burden of liability because it controls part of the CLEC's data service. However, the CLEC owned splitter scenario provides a balance in that both parties share the liability for each other's service. The Arbitrators are convinced that Parties will be able to resolve their unique liability concerns in a mutual reciprocal manner. Further, by owning and controlling their splitters, CLECs can manage their own capacity, guarantee rapid deployment and ensure that they deploy the most advanced technology without any ILEC intervention.²²

¹⁷ Rhythms has already procured the necessary number of splitters for the June 6, 2000 rollout (Tr. at 481, May 23, 2000). Advanced Solutions, Inc. (ASI) would be using splitters that are integrated in the DSLAM (Tr. at 231-232, May 23, 2000). IP has purchased approximately 250 splitters and installed the majority of them (Tr. at 228, May 23, 2000).

¹⁸ See Tr. at 235-240 (May 23, 2000).

¹⁹ A DSLAM is essential in the provision of xDSL services.

²⁰ Tr. at 299-300 (May 23, 2000).

²¹ The Arbitrators note that if a space constraint actually exists it should be applicable to CLEC owned DSLAMS as well. Also, the integration of splitter functionality into the DSLAM could help alleviate such concerns.

²² Covad/Rhythms Exhibit No. 18, John Donovan's Direct Testimony at 22-23 (May 17, 2000).

Regardless, the ILECs are providing the CLEC with a menu of options. Both GTE and SWBT are offering the option of an ILEC-owned splitter. As detailed below however, the Arbitrators expect SWBT and GTE to abide by their own commitments to the CLECs, at a minimum, during the interim phase.

Although the third desired option was not discussed at length during the hearing, the Arbitrators believe this option is similar virtual collocation. Virtual collocation allows CLECs to purchase their equipment and transfer it to the ILEC, which in turn would be responsible for all installation, maintenance and repair activities. The Arbitrators note that the virtual collocation option is already available to CLECs.²³ Since virtual collocation is not unique to line sharing, the Arbitrators rule that this option is improper for decision in the interim phase.

1. Should SWBT be required to fully implement all requested splitter configurations for the Line-Sharing UNE in all requested central offices by June 6, 2000?

Parties' Positions

Rhythms, Covad, IP and Northpoint all claim that SWBT and GTE should be able to provide all splitter configurations by June 6, 2000, as they believe is mandated in the *Line Sharing Order*.

SWBT and GTE argue that they will provide all requesting carriers with access to the high frequency portion of the loop (HFPL) by June 6, 2000. However, SWBT and GTE assert that nothing in the FCC order requires ILECs to offer all requested configurations by that date.

Award

²³ SWBT's witness testified that ASI is using virtual collocation (see Tr. at 254, May 23, 2000) and that this option is also available to CLECs (see Tr. at 242-243, May 23, 2000).

As explained in the Arbitrators analysis of DPL Issue No. 2, the Arbitrators do not find that an ILEC must offer a menu of splitter configurations to requesting CLECs. The FCC urged states to issue interim awards quickly, "so that competitive carriers are actually able to begin providing advanced services on a shared loop within 180 days of release of this order."²⁴ (Emphasis added).

The Arbitrators rule that by allowing CLECs to provide advanced services on a shared loop using a CLEC-owned splitter,²⁵ in every GTE and SWBT central office (CO) in Texas, GTE and SWBT have complied with the *Line Sharing Order* mandate.²⁶ In the Arbitrators' analysis of DPL Issue No. 2, the evidence in the record does not support the CLECs assertion that without a selection of splitter configurations in the interim period, CLECs will not be able to effectively provide advanced services on a shared loop.

Both GTE and SWBT have committed to provide CLECs with ILEC owned splitters.²⁷ The CLECs have not presented persuasive evidence to establish that the ILEC deployment schedules are either anti-competitive or discriminatory against CLECs.²⁸ The Arbitrators note however, that some CLECs have made business decisions already for the interim period based on SWBT's and GTE's commitments and the splitter deployment schedules. Therefore, the Arbitrators fully expect SWBT and GTE to adhere to their commitments and continue with the scheduled splitter deployment, at a minimum, for the interim period. If the ILECs fail to comply with their scheduled deployment, the Arbitrators believe that the ability of CLECs to provide

²⁴ *Line Sharing Order* ¶160.

²⁵ See Attachment 1.

²⁶ None of the participating CLECs alleged that either SWBT or GTE would not allow CLECs to deploy advanced services on a shared loop using CLEC owned splitters.

²⁷ See Attachment 2 for SWBT owned splitter configuration and Attachment 3 for GTE owned splitter configuration.

²⁸ SWBT's splitter deployment schedule is based on CLECs submitted forecasts and priorities. 23% of the forecasted lines would be provided by June 6, 2000; 41% by June 20, 2000; 75% by June 20, 2000; and 100% by August 27, 2000 (See SWBT Exhibit No. 3, Betty Schlackman's Direct Testimony at 14-15).

advanced services on shared loops, for the interim, would be impaired. The Arbitrators expect to consider this issue stringently in the permanent phase. The findings in the interim phase in no way preclude a different outcome in the permanent proceeding.

3. **If an ILEC owns the splitter, should it be required to provide splitter functionality in line increments and shelf increments, at the option of the CLEC?**

Parties' Positions

Covad and Rhythms argue that providing splitter functionality in both line increments and in shelf increments is technically feasible and would allow CLECs to purchase only the amount of splitter space they need, thereby encouraging efficient use of splitter functionality and collocation space. Covad and Rhythms add that, in the ILEC-owned splitter configurations, providing splitter functionality in shelf increments allows CLECs to perform capacity management for themselves, eliminating the need for forecasts. IP and Northpoint agree that such an option is necessary and restate their position that flexibility would allow CLECs to implement individualized business plans to provide advanced services to Texas customers on a wide spread basis.

SWBT argues that SWBT's decision to provide splitters was in response to CLECs' requests in the collaborative process and was a voluntary decision, as the FCC allows, but does not require SWBT to own splitters. SWBT maintains that its systems and processes do not allow it to offer both line-at-a-time and shelf-at-a-time. Both GTE and SWBT claim that the shelf-at-a-time approach is inefficient and point out that if the line-at-a-time option does not meet a CLEC's need, it may opt to install its own splitter.

Award

The Arbitrators illustrate the difference between splitter in line increments and shelf increments using Attachment 2. Under the line-at-a-time option (line increment), Elements 4 and 9 would be wired following a CLEC order of the HFPL UNE. Under the shelf-at-a-time option (shelf increments) Element 9 would be in place for the whole shelf (96 lines) and element 4

would be wired following a CLEC order of the HFPL UNE. Under that option the whole shelf would be reserved for the CLEC. The Arbitrators find that SWBT and GTE are not required to provide splitter functionality both in line increments and shelf increments.

First, the *Line Sharing Order* requires ILECs to provide access to the HFPL UNE. While flexibility of ordering splitter functionality either in line increments or shelf increments to address CLECs' differing business needs might be beneficial, this alone does not support requiring ILECs to provide both options for the interim period. Also, the Arbitrators are not persuaded that the shelf-at-a-time approach is necessarily more efficient than the line-at-a-time approach. Both options require central office (CO) work at the time the CLEC orders the HFPL UNE.²⁹ Both IP and Covad agreed that for deployment in smaller markets, line-at-a-time is their preferred option.³⁰ Michael Zulevic, Covad's witness agreed that before the ADSL service massively penetrates the market, the shelf-at-a-time approach might result in underutilization.³¹ The Arbitrators note that although CLECs testified that other ILECs are offering a fraction of a shelf increments, no evidence was presented of any ILEC offering both options.³² Further, the Arbitrators note that this issue is moot if the CLEC is deploying its own splitter. Under the CLEC-owned splitter scenario, the CLEC has the flexibility to purchase as many splitter units as it needs and perform its own capacity and forecast management without depending on the ILEC.

As explained by SWBT witness, Ms. Schlackman, SWBT's operational support systems (OSS) is currently able to support only line increments³³ and any modification would not be

²⁹ The difference being one more cross connect under the line-at-a-time scenario, which requires negligible additional work and might effect the cost of the cross connect (See Tr. at 281-282, May 23, 2000).

³⁰ Tr. at 282-283 (May 23, 2000).

³¹ Tr. at 289-291 (May 23, 2000).

³² Tr. at 294 (May 23, 2000).

³³ SWBT Exhibit No. 3, Betty Schlackman's Direct Testimony at 11-12 (May 17, 2000) and Tr. at 294-297 (May 23, 2000).

possible in the near future.³⁴ Because the Arbitrators believe that line increment provisioning does not deny CLECs entry into the market place during the interim period, through line increment provisioning, the Arbitrators rule that SWBT and GTE are not required to provide splitter functionality in both line increments and shelf increments for the interim period.

19(a). Should Section 5.1.2 (Splitter ownership - Option 2) be amended to delete the initial phrase regarding waiver?

Parties' Positions

IP and Northpoint allege that this section should be amended since it is inconsistent with SWBT's agreement to provide splitters under this interim agreement.

SWBT claims that despite the absence of a legal obligation to provide splitter functionality, it has voluntarily agreed to do so under certain conditions and therefore the Commission should not impose more onerous conditions on it, especially in the context of interim relief.

Award

As set out in the Arbitrators' ruling on DPL Issues Nos. 1 and 2, SWBT is not required in the interim period to provide a number of splitter configurations. Nonetheless, the Arbitrators believe that SWBT should adhere to its original commitment. Therefore, the contract language is modified accordingly.

19(c). Should Section 5.1.2 be amended to limit SBC's ability to determine the location of its splitters?

³⁴ Telcordia advised SWBT that any modifications to the OSS system can not be addressed before November 200 and did not make any commitment on how long an interval would be required for such a change (See SWBT Exhibit No. 3, Betty Schlackman's Direct Testimony at 11-12, May 17, 2000).

Parties' Positions

IP and Northpoint claim that the section should be amended since this requirement is not in parity with the manner SWBT provides splitter functionality to Advanced Services Inc. (ASI) and potentially it can result in increased cost to the CLEC.

SWBT asserts that it should have the right to place the splitter so as to maximize the CO efficiency and that nothing in the *Line Sharing Order* requires SWBT to locate the splitter within the main distribution frame (MDF).

Award

The Arbitrators reject IP and Northpoint's argument on the grounds that their comparison to ASI is misplaced. As SWBT's witness testified, the virtual collocation option that ASI is utilizing is available to all CLECs.³⁵ However, CLECs can not pick and choose the benefits of virtual collocation, such as possible proximity to the MDF without taking the entire virtual collocation package, which includes higher pricing and no physical test access. Although the Arbitrators acknowledge that the SWBT-owned splitter scenario increases the total cable length from the customer to the CLEC's DSLAM, the Arbitrators are not currently persuaded that such an addition would harm the CLECs at this time.³⁶ The Arbitrators expect Parties to monitor this concern during the interim phase and report actual information to the Commission during the permanent proceeding. The Arbitrators also note that, as admitted by IP's witness, Jo Gentry, the CLEC owned splitter scenario minimizes cable "zigzagging."³⁷

³⁵ Tr. at 242-243 (May 23, 2000).

³⁶ A sample measurement in SWBT's COs in Texas indicated an addition of 183.75 feet of cable for the SWBT owned splitter scenario (Tr. at 255, May 23, 2000).

³⁷ Tr. at 256 (May 23, 2000). Also compare the data path length between Attachment 1 (CLEC owned splitter) and Attachment 2 (SWBT owned splitter).

III. Testing Issues

DPL Issue Nos. 6, 19(b), and 24

6. Should SWBT be required to provide CLECs with test access to the shared loop at any technically feasible point, including without limitation to the MDF and IDF?

Parties' Positions

Covad and Rhythms are seeking test access to the shared loop at any technically feasible point. They are primarily concerned about the vast number of cross connects along the shared loop and maintain that unlimited test access to the loop at any technically feasible point would help alleviate such concerns. IP and Northpoint state that both splitter proximity to the MDF and test access are important, but if they had to choose they would prefer splitter proximity to the MDF.

SWBT and GTE claim that the mechanized, remote access, loop testing³⁸ they are offering CLECs complies with the language of the *Line Sharing Order*.

Award

For the purpose of this interim Award the Arbitrators base their decision on the following language regarding testing from the *Line Sharing Order*:

"Thus, we require that incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair activities. We require that, at a minimum, incumbents must provide requesting carriers with loop access either through a cross-connection at the competitor's collocation space, or through a standardized interface designed for to provide physical access for

³⁸ SWBT's test is referred to as Mechanized Loop Testing ("MLT") (SWBT Exhibit No. 3, Betty Schlackman's Direct Testimony at 27, May 17, 2000). GTE's equivalent testing system is referred to as 4-Tel (Tr. at 377, May 23, 2000).

testing purposes. Such access must be provided in a reasonable and nondiscriminatory manner.”³⁹

The Arbitrators analyze each of the possible splitter ownership and location scenarios separately in order to address the issues raised by CLECs regarding test access. In general, however, the Arbitrators note that the testing access issue is still in its infancy and further developments in the DSLAMs that would allow remote test access would address many of the CLECs’ concerns.⁴⁰

Under the first scenario, CLEC-owned splitter (see Attachment 1), both GTE and SWBT are offering CLECs a standardized interface that allows a mechanized loop test (MLT) of the voice path from the voice switch to the customer premises (Elements 11 - 7, the splitter and Elements 5 - 1). This test would allow CLECs to test continuity, as well as other features of the voice path. In addition, CLECs can perform any technically feasible test that is utilizing only the HFPL from their DSLAM to the customer premises, as well as any technically feasible test on Element 6. Another test that the CLEC has the option to perform jointly with SWBT in its collocation space is the ANI test.⁴¹ The ANI test allows carriers to confirm that the loop at the splitter input is actually connected to the right switch port.⁴² The Arbitrators conclude that for the purpose of this interim Award, the test provided by the ILECs complies with the FCC’s mandate. Other CLEC-performed tests provide extensive testing ability and the CLECs are in agreement that besides some restriction that SWBT places about intrusive testing, SWBT is in compliance with the *Line Sharing Order* regarding testing for this scenario.⁴³

³⁹ *Line Sharing Order* ¶ 118.

⁴⁰ Tr. at 361-362 (May 23, 2000).

⁴¹ The technical feasibility of the ANI test at the splitter input port depends on the splitter hardware the CLEC utilizes (Tr. at 336-338, May 23, 2000).

⁴² Tr. at 334-335 (May 23, 2000).

⁴³ Tr. at 388-389 (May 23, 2000).

Under the second scenario, SWBT owned splitter (see Attachment 2), SWBT is again offering the CLECs the MLT to test the voice path from the voice switch to the customer premises (Elements 13 - 11, Elements 8 and 6, the splitter and Elements 5 - 1). This test, as in the first scenario would allow CLECs to test continuity, as well as other features of the voice path. SWBT is also offering CLECs physical access to a test port on the splitter that would allow isolated testing of Elements 10, 9 and 7.⁴⁴ In addition, CLECs can perform any technically feasible test that is utilizing only the HFPL from their DSLAM to the customer premises through Elements 10, 9 and 7 (the elements that are not tested via SWBT's MLT). The Arbitrators conclude that, for the purpose of this interim Award, the tests provided by the ILECs comply with the FCC mandate and are reasonable and nondiscriminatory. Other CLEC-performed tests provide additional testing abilities. Currently, the Arbitrators do not believe that the evidence supports that lacking unlimited, direct physical access to the MDF and IDF would impede CLECs' entry to the market.⁴⁵

Under the third scenario, GTE owned splitter (see Attachment 3), GTE is offering the CLECs its 4-Tel test to test the voice path from the voice switch to the customer premises (Elements 9, 7 and 5, the splitter and Elements 3 - 1). This test, as in the first scenario would allow CLECs to test continuity as well as other features of the voice path. In addition, CLECs can perform any technically feasible test that is utilizing only the high frequency portion of the loop from their DSLAM to the customer premises through Elements 8, 6 and 4 (the elements that are not tested via GTE's 4-Tel test). The Arbitrators conclude that for the purpose of this interim Award, the test provided by GTE complies with the FCC mandate and is reasonable and nondiscriminatory. Other CLEC-performed tests provide additional testing abilities. Currently, the Arbitrators are not persuaded that lacking unlimited, direct physical access to the splitter as well as the MDF would impede CLECs entry to the market.

⁴⁴ See Tr. at 356-359 (May 23, 2000). The Arbitrators encourage SWBT and the CLECs to explore the possibility of a remote version of this test via SWBT's OSS systems (Tr. at 365, May 23, 2000).

⁴⁵ Covad witness admitted that usually CLECs are prohibited from approaching the MDF and IDF (Tr. at 245-246, May 23, 2000).

In order to ensure timely and reliable provisioning of the HPFL UNE, the Arbitrators order Parties to jointly file, within 30 days of the issuance of this Award, procedures for ILEC's testing of the HFPL before provisioning it to CLECs and CLECs acceptance tests. Also, the Arbitrators require GTE and SWBT to file, within 30 days of the issuance of this Award, procedures for testing the HFPL in case of a CLEC trouble report, including an option to jointly test with the CLEC. The Arbitrators believe that such information would assist the Commission in determining issues such as testing and performance measures in the permanent proceeding.

19(b) Should Section 5.1.2 be amended to delete the limitation on testing related to intrusive testing?

Parties' Positions

CLECs believe that intrusive testing should be allowed provided that the customer approves the testing.

Award

Since the CLEC and the ILEC are sharing the loop and the customer,⁴⁶ any service-intrusive test performed by either party must be coordinated with the other party as well as with the customer. Therefore, the contract language is modified accordingly.

24. Should Sections 8.6 and 8.7 be deleted?

Parties' Positions

⁴⁶ The ILEC is providing the customer with basic local exchange service on the low frequency portion of the loop and the CLEC is providing the customer with data service on the HFPL.

See discussion in DPL Issue No. 19(b).

Award

See discussion in DPL Issue No. 19(b). The contract language is modified accordingly.

IV. Provisioning Issues

DPL Issue Nos. 4-5

4. Should SWBT be required to provision the Line Sharing UNE during the interim period according to the following intervals:

June 6 – September 6, 2000: ILEC provisions the Line Sharing UNE within 3 business days for loops that do not require de-conditioning, 5 business days for loops that require de-conditioning.

September 7 – December 7, 2000: ILEC provisions the Line Sharing UNE within 2 business days for loops that do not require de-conditioning, 4 business days for loops that require de-conditioning.

After December 7, 2000: ILEC provisions the Line Sharing UNE within 24 hours for loops that do not require de-conditioning and within 3 business days for loops that require de-conditioning.

What is the appropriate interval for provisioning the Line-Sharing UNE?

Parties' Positions

Rhythms and Covad contend that the provisioning interval should vary depending on the network configuration, but in general, should be significantly shorter than the intervals applicable standard xDSL loops because the loop is already provisioned to the customer premise. In an effort to give the ILECs time to adjust to provisioning the HFPL, Rhythms and Covad have proposed a 3 tiered-provisioning interval. The proposed interval applicable during the interim is 3 business days for loops that do not require conditioning and 5 business days for loops that require deconditioning. Northpoint and IP agree with Rhythms and Covad and argue that it is imperative that the provisioning intervals enunciated in the *Line Sharing Order* be used.

SWBT proposes provisioning intervals based on the number of loops ordered. For orders of less than 20 loops that do not require conditioning, SWBT advocates a provisioning interval of 5 business days. For orders of less than 20 loops that require conditioning, SWBT advocates a provisioning interval of 10 business days. For orders of greater than 20 loops, SWBT proposes a

provisioning interval of 15 days if no conditioning is needed, and an interval agreed to by parties if conditioning is required. SWBT asserts that these are nearly identical to the provisioning intervals awarded in the Rhythms/Covad DSL Arbitration.⁴⁷

GTE argues that the provisioning interval is governed by the *Line Sharing Order*, which requires parity with the provision of GTE's own xDSL services. Parity intervals would require GTE to provision the HFPL within 5 business days when conditioning is not required and 11 business days when conditioning is required.

Award

The Arbitrators find that the provisioning and installation interval for the HFPL UNE, where no conditioning is requested will be 3 business days, or the provisioning and installation interval applicable to the ILECs' tariffed xDSL services, or its affiliate's xDSL services, whichever is less. Although this interval is shorter than the 5 day interval proposed by SWBT and GTE (which is also the provisioning interval for their xDSL retail offering), the Arbitrators believe that this is a reasonable approach based on the evidence in the record.⁴⁸ The provisioning and installation intervals for the HFPL UNE where conditioning is requested will be 10 business days, or the provisioning and installation interval applicable to the ILEC's tariffed xDSL services or its affiliate's xDSL or shared line services, where conditioning is required, whichever is less. Orders for more than 20 loops per order or per end-user location, where no conditioning is requested, will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. Orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval agreed by the Parties in each instance. The provisioning intervals for HFPL UNE, where conditioning is needed, are consistent with the

⁴⁷ Docket Nos. 20226 and 20272.

⁴⁸ See discussion regarding the required activities to provision the HFPL when conditioning is not necessary (Tr. at 448-452, May 23, 2000).

Commission approved provisioning intervals for xDSL loops in the Covad/Rhythms Arbitration. The Arbitrators find that the provisioning intervals above are applicable to both SWBT and GTE. The Arbitrators are confident that the provisioning intervals ordered above will promote the rapid deployment of advanced services as mandated by section 706 of the FTA.

5. Should SWBT be required to provide tie cables necessary for the collocation of splitters (under the CLEC-owned splitter configuration) within 30 calendar days of receipt of a CLEC's application?

Parties' Positions

Rhythms and Covad assert that relying on the provisioning intervals in the ILECs' collocation tariffs is not appropriate, as the provisioning intervals are too long. Rhythms and Covad suggest that the Commission require SWBT and GTE to provision tie cable for line sharing within 30 days. Northpoint and IP agree with Rhythms and Covad and contend that the appropriate provisioning interval for tie cables is 15 or 30 days as contained in SWBT's collocation tariff.⁴⁹

SWBT and GTE argue that in the interim, there is no reason to treat tie cable installation differently for line sharing than any other collocation function. Both companies contend that the Commission should rely on the existing timetables for collocation. Therefore, SWBT suggests that the Commission rely on the timetables existing in SWBT's state collocation tariff, while GTE proposes an 80-day provisioning interval, as provided in its federal collocation tariff. GTE does not have a state collocation tariff and has testified that tie cables themselves do not have a specified interval associated with them. Instead, GTE explained that the provisioning of tie cables is part of the 90-day interval associated with provisioning everything that is necessary for collocation. Also, GTE witness John Boshier testified that augments, which could feasibly entail

⁴⁹ Section 6.3.1(D) of SWBT's collocation tariff.

the provisioning of tie cables, have a provisioning interval of 80 calendar days in GTE's federal tariff.⁵⁰

Award

During the interim, the Arbitrators order that the tie cable provisioning intervals provided in the SWBTs' existing collocation tariffs shall govern, as this issue is not unique to the HFPL UNE. Therefore, the appropriate provisioning interval for tie cables, provisioned by SWBT, is equal to the intervals delineated in SWBT's collocation tariff – no more than 30 calendar days depending on the number of tie cables. The Arbitrators find that GTE's provisioning interval of 80 calendar days, as set forth in its federal tariff, for tie cables, is unreasonable. The Arbitrators also find no reason for such a discrepancy between two ILECs of comparable size. Therefore, and since GTE does not currently have a Texas approved collocation tariff, the Arbitrators order GTE to provision tie cables necessary for collocation of splitters within 30 calendar days.

An additional issue, related to tie cables, which arose during the hearing, is how many IDF terminations does the CLEC have to designate for the purpose of line sharing. The Arbitrators order SWBT to permit CLEC's utilizing SWBT owned splitters, to assign blocks of 50 terminations on the IDF, for the purpose of line sharing, consistent with the discussion in the hearing.⁵¹ The Arbitrators rule that such flexibility is necessary to accommodate different CLECs business plans and prevent underutilization of CLECs' tie cables.

⁵⁰ Tr. 487, ln. 1-21 (May 23, 2000).

⁵¹ The assignment has to be contiguous and comply with the CLEC's splitter forecast (Tr. at 443-447, May 23, 2000).

V. Rate Issues

DPL Issue Nos. 7 and 25

7. Should SWBT charge CLECs recurring and non-recurring rates for the Line Sharing UNE as stated in Exhibit A?

What are the appropriate recurring charges for all elements of the Line-Sharing UNE under federal pricing rules and FCC Order 99-355??

Parties' Positions

Rhythms and Covad suggest that the Commission rely on previously adopted rates for cross connects, OSS charges, conditioning of loops, and any other element that has a direct analog. Rhythms and Covad assert that the rate for the HFPL UNE should be \$0. Rhythms and Covad explain that the \$0 rate is consistent with TELRIC methodology and the *Line Sharing Order*. Rhythms and Covad accept as reasonable SWBT's proposed rate for splitters.

Northpoint and IP argue that the Commission should rely on rates already established in Attachment 25: DSL, Appendix: UNE Pricing and the collocation tariffs during the interim. Northpoint and IP stress that the only additional interim rates that should be established are for ILEC owned splitters. Northpoint and IP suggest a recurring rate of \$0 for the HFPL UNE and \$0.89 per splitter for both SWBT and GTE.

SWBT proposes rates for the HFPL UNE, cross connects, splitters, and OSS costs. SWBT contends that the appropriate recurring rate for the HFPL UNE is 50% of the UNE loop rate.

GTE proposes rates for the splitter, provisioning the splitter, a splitter service order and a \$0 rate for the HFPL UNE. There is no evidence supporting GTE's proposed rates in the record.

Award

High Frequency Portion of the Local Loop

For the purpose of this interim Award, the Arbitrators base their decision on the following language regarding pricing and cost allocation issues from the *Line Sharing Order*:

"We conclude that, in arbitrations and in setting interim prices, states may require that incumbent LECs charge no more to competitive LECs for access to high frequency local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."⁵²

"By requiring incumbent LECs to provide access to these high frequency local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services."⁵³

During the hearing, SWBT testified that the amount of the local loop costs allocated to its retail ADSL offering, in its cost study, was \$0.00.⁵⁴ Therefore, the Arbitrators find the monthly recurring rate SWBT should charge for the HFPL UNE, is \$0. The Arbitrators believe that not only would this rate address the FCC's concern regarding a potential price squeeze, but it would also be consistent with the general pro-competitive purpose underlying the TELRIC principles.⁵⁵ This rate is subject to true up based on the rates set by the Commission in the final proceeding.

There is no evidence in the record to support GTE's proposed rates. However, as GTE is proposing a \$0 rate for the HFPL UNE,⁵⁶ similar to the proposal of Rhythms and Covad, the Arbitrators find that the monthly recurring rate GTE should charge for the HFPL UNE, is \$0. This rate is subject to true up based on the rates set by the Commission in the final proceeding.

⁵² *Line Sharing Order* ¶ 139.

⁵³ *Line Sharing Order* ¶ 141.

⁵⁴ Tr. 524, Ln. 6-9 (May 23, 2000).

⁵⁵ *Line Sharing Order* ¶ 139.

⁵⁶ GTE Exhibit No. 3, David Berhle's Direct Testimony at 3 (May 17, 2000).

Splitters

The Arbitrators find that the appropriate interim rate for an ILEC owned splitter is a monthly recurring charge of \$0.89, as proposed by SWBT. All CLECs agreed to the adoption of SWBT's proposed rate. This rate should include all the tie cables that are pre-wired from the splitter to the IDF.⁵⁷ In the absence of support for the proposed rates of GTE, the Arbitrators find that the rate proposed by SWBT should apply to GTE as well. Although the splitter configuration proposed by GTE is not identical to SWBT's configuration, the Arbitrators find that the SWBT rate can serve as a proxy for the interim.⁵⁸ This rate is subject to true up based on the rates set by the Commission in the final proceeding.

Cross-connects

The *Line Sharing Order* provides the following guidance for setting rates for cross connects:

"We would expect that the costs of installing cross connects for xDSL services in general would be the same as for cross connecting loops to the competitive LECs' collocated facilities, particularly where the splitter is located within the incumbent LEC's MDF. Accordingly, we find it reasonable to establish a presumption that, where the splitter is located within the incumbent LECs' MDF, the cost for a cross connect for entire loops and for the high frequency portions of loops should be the same. We would expect the states to examine carefully any assessment of costs for cross connections for xDSL services that are in excess of the costs of connecting loops to a competitive LECs' collocated facilities where the splitter is located within the MDF. If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. We would expect that

⁵⁷ As explained in the hearing, SWBT pre-wires the tie cables (Elements 5-6 in Attachment 2) to the IDF as part of the splitter installation (see Tr. at 270-271, May 23, 2000). Upon review of SWBT's HFPL cost study (Covad/Rhythms Exhibit No. 3), the Arbitrators determine that SWBT included the tie cables investment as part of the splitter cost.

⁵⁸ The main difference between the two configurations, besides the different splitter equipment, is that in the GTE scenario the splitter is located in proximity to the MDF and therefore the length of tie cables is substantially shorter (compare Attachment 2 and 3).

this amount would be only minimally higher than for cross connecting a splitter located within the MDF to the competitive LEC's xDSL equipment."⁵⁹

James Smallwood, SWBT's witness, testified during the hearing that the cross connect nonrecurring rate proposed by SWBT for the CLEC-owned splitter scenario reflects SWBT's investment for 4 jumpers (Elements 2, 4, 8 and 10 in Attachment 1).⁶⁰ The Arbitrators agree with Covad and Rhythms that the existing, Commission-approved rate for cross connect already includes the investment for these jumpers.⁶¹ Since James Smallwood, SWBT witness, admitted that these cross connects are not unique to the line sharing scenario,⁶² the Arbitrators determine that in the interim it would be inappropriate to adopt SWBT's proposed rate. Therefore, under the CLEC-owned splitter scenario (Attachment 1), the Arbitrators order SWBT to charge CLECs, in the interim, two applicable cross connect rates as prescribed in its Commission-approved interconnection agreements.⁶³ Since GTE presented no evidence in support of its cross connect rate, the Arbitrators order GTE to charge CLECs utilizing their splitter, in the interim, two applicable cross connect rates as prescribed in its Commission approved interconnection agreements. The Arbitrators believe that this rate is reasonable for application to GTE since GTE should be able to install jumpers and tie cables for a similar cost to the efficient cost the Commission assumed for SWBT.

The number of jumpers needed in the SWBT-owned splitter scenario is five (Elements 2, 4, 8, 9 and 12 in Attachment 2).⁶⁴ Since this number is higher than the number of jumpers associated with the Commission approved cross connect rate, additional cost needs to be applied to this scenario. However, the Arbitrators decline to accept SWBT's proposed rate, as it is

⁵⁹ *Line Sharing Order* ¶ 145.

⁶⁰ Tr. at 527-529 (May 23, 2000) and Commission Exhibit No. 2.

⁶¹ Covad/Rhythms Exhibit No. 17, Terry Murry's Direct Testimony at 23 (May 17, 2000).

⁶² Tr. at 529-530 (May 23, 2000).

⁶³ To the extent that Elements 5 and 7 in Attachment 1 already exist, SWBT should not re-charge the CLEC since the non-recurring and monthly recurring rate it is charging the CLEC covers all the necessary labor and material investment.

unreasonably high compared to similar Commission-approved rates and the Arbitrators are concerned that the application of SWBT's cross connect rate would create an artificial barrier to entry. Therefore, for the SWBT-owned splitter scenario (Attachment 2), the Arbitrators order SWBT to charge CLECs, in the interim, three applicable cross connect rates as prescribed in its Commission approved interconnection agreements.⁶⁵ The Arbitrators believe that doing so would allow SWBT to recover all its additional installation and testing investments without imposing an unnecessary burden on the CLECs. The Arbitrators do not find any compelling evidence to necessitate the calculation of new "line sharing specific" cross connect rates for the interim period for the scenario presented in Attachment 3 (GTE owned splitter). Under this scenario GTE locates the splitter on the MDF and therefore, based on the FCC guidance, the Arbitrators rule that GTE should charge CLECs, in the interim, one applicable cross connect rate existing in its Commission approved interconnection agreement.⁶⁶

OSS

For the purpose of this interim Award the Arbitrators base their decision on the following language regarding pricing and cost allocation issues from the *Line Sharing Order*:

"We find that incumbent LECs should recover in their line sharing charges those reasonable incremental costs of OSS modification that are caused by the obligation to provide line sharing as an unbundled network element....states may require incumbent LECs in an arbitrated agreement to recover such nonrecurring costs as those incremental OSS modification costs through recurring charges over a reasonable period of time; and that nonrecurring charges must be imposed in an equitable manner among entrants."⁶⁷

⁶⁴ Tr. at 536 (May 23, 2000) and Commission Exhibit No. 3.

⁶⁵ To the extent that Element 10 in Attachment 2 already exists, SWBT should not re-charge the CLEC since the non-recurring and monthly recurring rate it is charging the CLEC covers all the necessary labor and material investment.

⁶⁶ To the extent that Element 8 in Attachment 3 already exists, GTE should not re-charge the CLEC since the non-recurring and monthly recurring rate it is charging the CLEC covers all the necessary labor and material investment.

⁶⁷ *Line Sharing Order* ¶ 144.

The Arbitrators find that the monthly rate proposed by SWBT in order to recover the costs of OSS development associated with line sharing is appropriate for the interim period. The Arbitrators acknowledge CLECs' rationale regarding this rate element,⁶⁸ but absent other evidence in the record and because it is a reasonable allocation for the interim, the Arbitrators determine that SWBT's proposed rate element is appropriate. The Arbitrators will examine the recovery costs of OSS development and calculate an appropriate rate for recovery in the permanent proceeding, after a final Commission determination on the various operational issues raised by the parties. Absent any evidence in the record, the Arbitrators rule that GTE shall use SWBT's proposed rate for the interim. There is no evidence in the record to support a finding that GTE's OSS costs differ significantly from SWBT's OSS costs. The \$0.61 per line recurring monthly OSS rate is subject to true-up based on the rates set by the Commission in the final proceeding.

25. Should the Interim Appendix contain Section 10 regarding Prices?

Parties' Positions

Northpoint and IP support the inclusion of Section 10.

Award

The Arbitrators find that the Interim Appendix should contain Section 10 regarding Prices. However, Section 10 must be amended to comply with this interim Award. If a rate is not included in Section 10, Parties should look to their existing interconnection agreement to provide the appropriate rate.

⁶⁸ Mainly, CLEC's claim that there is no justification for SWBT's OSS investment and that the number of xDSL customers assumed in determining this rate is unreasonable (Covad/Rhythms Exhibit No. 17, Terry Murry's Testimony at 37-39).

VI. Miscellaneous Contract Issues

DPL Issue Nos. 8, 9-16, 18, 20-21, 23, and 26

The Parties agreed to waive cross-examination on the following issues at the hearing.⁶⁹ The Arbitrators base their decisions on all evidence in the record, as these issues pertain to the underlying subject matter of sections II-V.

8. Miscellaneous Interim Line Sharing Contract Definition and Implementation Issues

Parties' Positions

Covad and Rhythms propose interim contract language that contains the minimum terms and conditions necessary to begin line sharing as of June 6, 2000.

SWBT asserts that its proposed language complies with the Line Sharing Order and therefore should be accepted. GTE claims that the term and conditions addressed in DPL Issues 1 through 7 provide sufficient bases for CLECs to provide advanced services on a shared loop as provided by the *Line Sharing Order*. GTE object to the inclusion of phase II issues in the phase I interim proceeding.

Award

The Arbitrators rule that Covad's and Rhythms' language that is not necessary for the implementation of this interim Award should be rejected. The Arbitrators use their analysis of DPL Issues 1-7 and the Line Sharing Order to amend the language proposed by parties.

9. Should Section 1.5 be clarified to ensure that the prices in the Appendix are interim and to clarify that the rates for loop conditioning are governed by the existing Interconnection Agreement?

Parties' Positions

⁶⁹ See Tr. at 394 (May 23, 2000).

IP and Northpoint state that Section 1.5 should be clarified to ensure that the prices prescribed by this agreement are interim and existing rates for loop conditioning should apply. SWBT is in agreement with IP and Northpoint's position.

Award

As stated in the analysis of DPL Issue No. 7, the Arbitrators agree with IP's and Northpoint's position that the addition of the term "interim" clarifies the intent of the provision. Regarding loop conditioning, as stated in the analysis of DPL Issue No. 7, unless the rate element is unique to the HPFL UNE, the rates existing in the parties interconnection agreements should apply. The contract language is modified accordingly.

10. Should Section 1.9 be modified to delete the automatic termination provision?

Parties' Positions

IP and Northpoint assert that the automatic termination provision should be deleted because the interim appendix should remain in effect until the Commission issues a final award replacing the interim award. In addition, SWBT's language does not capture the current Commission process for approval of agreements.

Award

The Arbitrators believe that the automatic termination provision should not be included in the contract. The Parties agreed at the interim relief hearing that because of conflicts and the complexities of the issues, Phase II of the arbitration would not take place within the 9 month parameter under the FTA. Therefore, this provision must be deleted. The Arbitrators find that the interim Award will remain in place until the Commission issues a final Arbitration Award in this proceeding.

11. Should Section 1.10 be modified to delete the provision that either party may unilaterally terminate the Interim Appendix after 30 days notice?

Parties' Positions

IP and Northpoint indicate that this provision was completely erroneous and should not be contained in the interim contract.

SWBT includes within its proposed contract language a provision, which entitled either Party to unilaterally terminate the contract upon 30 days notice.

Award

At the hearing, SWBT agreed that this provision should not be in the interim contract and that it should be deleted.⁷⁰ Accordingly, this issue is moot.

12. Should Section 1.11 be modified to ensure that already-Commission approved relevant Performance Measurements will apply to activities performed under the Interim Appendix?

Parties' Positions

IP and Northpoint argue that no reason exists for the performance measures to cease for the interim period. In fact, they argue that the performance measures must apply to instill performance by the ILEC.

SWBT indicates that because of the interim nature of the contract, performance measures should not apply and therefore, penalties under such measures would not be applicable.

Award

The Arbitrators note that performance measures for xDSL have already been established in another docket. Although specific xDSL measures are being modified to some extent during the Commission's six-month review, there is no reason specific to the issues in this arbitration that the performance measures should not apply during the interim period. In addition, if the performance measures were not applicable during the interim period, incentives for SWBT to provide nondiscriminatory access to the HFPL UNE would be diminished. Therefore, the relevant performance measures will apply during the interim period.

13. Should SWBT be required to comply with the presumed acceptable standards for deployment of xDSL standards for line sharing as enunciated by the FCC?

Parties' Positions

IP and Northpoint state that the language proposed by SWBT regarding standards for deployment of xDSL for line sharing is not in compliance with the *Line Sharing Order*.

Award

The Arbitrators believe that all Parties are in agreement regarding xDSL technologies that are presumed acceptable for deployment in the interim period.⁷¹ The Arbitrators believe that this issue is very similar to an issue that was resolved by the Commission in the Covad/Rhythms Arbitration and advise the Parties to take that into consideration for the permanent proceeding. To the extent that the issue in discussion is similar to the issues addressed by the Commission in the Covad/Rhythms Arbitration, the contract should refer to that language. The contract language is modified accordingly.

⁷⁰ Tr. at 552 (May 23, 2000).

⁷¹ All Parties agreed that for an interim period of 3 months the xDSL flavors acceptable for deployment are ADSL, RADSL and G.Lite (Tr. at 549-550, May 23, 2000).

14(a). Should Sections 3.5 and 3.6 be deleted regarding liability and indemnification to enable the provisions of the underlying Agreement to apply to the Interim Appendix?

14(b). In the event the provisions remain separate from the general terms, then should Sections 3.5.1, 3.5.2, and 3.6.1 be modified to make the liability provisions are reciprocal?

Parties' Positions

IP and Northpoint indicate that as in all interconnection agreements, the underlying provisions should apply and the interim Appendix should merely add a layer onto the existing interconnection agreement.

SWBT indicates that these provisions were important to include in the interim Appendix because some CLECs were not familiar with xDSL provisions.

Award

The Arbitrators agree that underlying interconnection terms and conditions should apply and that indemnification provisions in the interim Appendix are unnecessary and duplicative. Therefore, sections 3.5 and 3.6 are deleted and Parties should refer to their respective interconnection agreements.

15. Should Section 3.5.2 be amended to modify the process where a deployed service allegedly degrades the performance of its advanced service or traditional voiceband services?

Parties' Positions

IP and Northpoint claim that, as currently worded, SWBT's provision does not comply with the *Line Sharing Order*. SWBT believes that this provision complies with the *Advanced Services Order* and the *Line Sharing Order*.

Award

See discussion under DPL Issue No. 13.

16. Should Sections 4.1, 4.1.1, 4.1.2, and 4.1.2.1 be deleted since these definitions are already included in the Attachment 25-DSL?

Parties' Positions

IP and Northpoint state that the current sections in SWBT's proposed contract contain definitions of types of xDSL loops. Since the line sharing appendix should be adjunct to the xDSL section of the corresponding interconnection agreement, these definitions are duplicitous and unnecessary.

SWBT claims that the line sharing appendix should be offered as a separate and complete package and therefore IP's and Northpoint's modifications are inappropriate.

Award

The Arbitrators agree with IP and Northpoint and conclude that the line sharing appendix is legitimately related to the xDSL section of the Parties' interconnection agreement. The contract language is modified accordingly.

18. Should Section 4.2 be modified to add a requirement of 5 business day advance notification before SWBT disconnects its POTS customer?

Parties' Positions

IP and Northpoint propose a five day interval following an ILEC's POTS end-user disconnect order to allow the CLEC to make the necessary business arrangement. Also IP and Northpoint offer language regarding the appropriateness of reconfiguration and disconnect orders.

SWBT proposed a three day interval in response to the CLECs' proposal.

Award

The Arbitrators rule that SWBT's proposal relating to notification intervals is reasonable and appropriate for the interim period. The Arbitrators believe that SWBT's proposal does not create a barrier to entry for the CLECs. Regarding the appropriateness of reconfiguration and disconnect charges the Arbitrators believe that the language proposed by IP and Northpoint correctly captures the appropriate charges that should apply when the ILEC disconnects its POTS customer. The contract language is modified accordingly.

20. Should SWBT be required to provide actual notification to the end use customer and to the CLEC in the event SWBT needs to repair or to replace splitters or provide other maintenance/repair work?

Parties' Positions

IP and Northpoint assert that SWBT needs to notify both the CLEC and the end-user customer before it performs any repair or maintenance activity.

Award

See discussion regarding DPL Issue No. 6. While the Arbitrators understand the ILEC's obligation toward its POTS end-user customer, the need for notification and coordination with both the CLEC (with which the ILEC is sharing the customer) and the end-user customer is essential. The contract language is modified accordingly.

21. Should Section 5.1.2.6 be deleted in its entirety?

Parties' Positions

IP and Northpoint assert that the language in this section is duplicative of another section in SWBT's proposed contract and should be deleted. In addition, IP and Northpoint argue that it

is inappropriate for SWBT to levy a charge against the CLEC if SWBT disconnects its POTS customer.

Award

The Arbitrators find that the interim contract language provided by this Award and addressed in DPL Issue No. 18, captures the appropriate terms and conditions when SWBT disconnects its POTS service. Therefore, this language, as proposed in Section 5.1.2.6, shall not be included.

23(a). Should Section 6.4.4 be amended to provide specific standards for service degradation?

23(b). Should Section 6.4.4 be amended to provide a specific procedure and standards for disputes over whether a service is being degraded due to xDSL deployment?

Parties' Positions

See discussion regarding DPL Issue No. 13.

Award

See discussion regarding DPL Issue No. 13.

26. Should Section 11 be amended to add a new section regarding reservation of rights?

Parties' Positions

IP and Northpoint indicated that because of the interim nature of the appendix, the Parties should recognize that their rights to assert positions during the final phase of the arbitration are not prejudiced by positions adopted in the interim phase.

SWBT agreed with IP's and Northpoint's positions.

Award

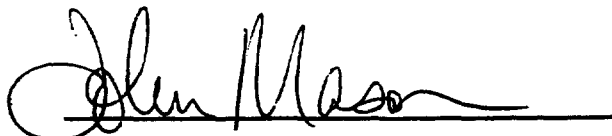
The Arbitrators believe that IP's and Northpoint's position is reasonable. In addition, there does not appear to be disagreement between the parties regarding the inclusion of this provision.

VIII. Conclusion

The Arbitrators conclude that the foregoing interim Award, including the attached appendices, resolves the disputed issues presented by the Parties for arbitration. The Arbitrators further find that this resolution complies with the standards set in FTA §252(c), the *Line Sharing Order*, and P.U.C. PROC. R. 22.301-22.310.

SIGNED AT AUSTIN, TEXAS the 6th day of June, 2000.

FTA § 252 ARBITRATION PANEL



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